



**STATE OF ARIZONA
DEPARTMENT OF INSURANCE**

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CIRCULAR LETTER 2000-4

TO: All Property and Casualty Insurers Authorized to Transact in Arizona,
Insurance Trade Associations, and Other Interested Parties

FROM: Charles R. Cohen, Director of Insurance

DATE: February 22, 2000

RE: **Common Areas of Regulatory Non-Compliance in Personal Lines**

To promote industry awareness and compliance with Arizona insurance laws, the Department of Insurance has compiled these observations based on common findings from our market conduct examinations and our review of consumer complaints over the last three years involving personal lines insurance. The Department encourages insurers to regularly evaluate their policies and practices to ensure compliance with Arizona laws and rules relevant to the lines of business they write. We hope these points help focus insurers' self-appraisals on areas in which non-compliance is more prevalent. Some of those areas are addressed in more detail in the Department's past Circular Letters, which can be found on our website: www.state.az.us/id. The referenced statutes and rules can also be accessed through the "Links" available on our website.

In our experience, many of the problems identified could have been avoided with improved and/or more frequent training of company personnel on the subject of regulatory requirements.

Unfair Claims Settlement Practices
(A.R.S. §§ 20-461 and 20-462; A.A.C. R20-6-801)

When handling claims, insurers are required to:

- ❖ Adequately document claim files. Claim files must contain adequate documentation to allow the Department to reconstruct pertinent events and dates. If the claim file does not contain documentation of dates and the action taken, the Department will presume that the action was not taken. (A.A.C. R20-6-801(C))
- ❖ Advise first party claimants of all coverages available and pertinent to a claim. For example, if a claimant suffers a property loss that might also qualify him or her for medical payment benefits, the claims examiners has a duty to inform. (A.A.C. R20-6-801(D))
- ❖ Respond to a Department inquiry within 15 working days and to claimant inquiries within 10 working days. It is helpful when the insurer designates a contact person who is aware of the specified time frames. For the Department to achieve its objective to promptly resolve consumer complaints, it is important that insurers respond as completely as possible to all concerns raised in the Department's correspondence, including the submission of supporting documentation when requested. (A.A.C. R20-6-801(E))
- ❖ Adequately document claim files to justify the deductions made on first and third party auto claim settlement amounts. (A.A.C. R20-6-801(H)(1)(c) and (6))
- ❖ Properly calculate interest payments due on claims not paid within 30 days after receipt of sufficient proofs of loss. Interest must be calculated from the date the claim was received. (A.R.S. §§ 20-462 and 44-1201)
- ❖ Include the mandatory fraudulent claim warning statement on its claim-related forms. (A.R.S. § 20-466.03)

Rating

(A.R.S. Title 20, Chapter 2, Article 4.1)

Insurers must comply with the rates and supplementary rate related criteria filed by them or on their behalf with the Department. The Department encounters the following types of rating violations more frequently than others:

- ❖ Applying rating factors that conflict with filed rates. For instance, insurers apply incorrect territory codes or fire districts, and fail to, or inaccurately, apply applicable surcharges or credits. It is important to document the underwriting file to support decisions made by the underwriter in applying a flexible component of a rate filing, such as credits or surcharges. Errors in applying filed rates can result in

overcharges to consumers, but more frequently result in undercharges. (A.R.S. § 20-385)

- ❖ Failing to abide by the rate quoted by your agent (see Circular Letter No. 95-1).
- ❖ Surcharging insureds for accidents not caused or significantly contributed to by the actions of the insured. (A.R.S. § 20-263)

Licensure

(A.R.S. Title 20, Chapter 2, Article 3)

Insurers are reminded of the following:

- ❖ Insurers must determine whether firms and individuals are properly licensed as agents before allowing them to transact on their behalf and before paying them commissions (A.R.S. § 20-311).
- ❖ Each quarter, insurers must review their records to determine whether a producer has risen to the level of a Managing General Agent. (A.R.S. §20-301.01(B)(6)). In addition, insurers must notify the Department within 30 days of appointing or terminating any MGA. (A.R.S. § 20-301.01(B)(5)).

Cancellation and Nonrenewal of Automobile Insurance

(A.R.S. Title 20, Chapter 6, Articles 11 and 12)

When rendering adverse underwriting decisions, insurers are required to:

- ❖ Offer an exclusionary rider to the named insured prior to nonrenewing the policy due to the driving record of an individual other than the named insured. (A.R.S. § 20-1631(F)).
- ❖ State the specific facts which constitute the reasons for the cancellation and notify the insured of his or her right to complain to the director within ten days after receipt of the Notice. (A.R.S. § 20-1632(A)(1)).
- ❖ Mail the refund for unearned premium with the Notice of Cancellation. (A.R.S. § 20-1632(A)(3))
- ❖ Notify the insured that the Motor Vehicle Department was notified of the cancellation and that the insured's motor vehicle registration may be suspended (A.R.S. § 28-4148(F)).

Privacy Act
(A.R.S. § 20-2101 et seq.)

We have frequently found non-compliance with the following provisions of the Insurance Information and Privacy Protection Act (A.R.S. §§ 20-2101 et. seq.)

- ❖ A.R.S. § 20-2104 requires that agents and/or insurers provide a written *Notice of Information Practices* on new and renewal business when “personal information” is collected on the applicant or insured. A.R.S. § 20-2102(18) defines “personal information” as including information about an individual’s character, habits, avocations, finances, occupation, credit, health or other personal characteristics. The *Notice of Information Practices* shall inform the applicant or insured: that personal information may be collected, the possible type and source of personal information, the limited circumstances under which the personal information may be disclosed (A.R.S. § 20-2113), and the rights to access and correct personal information, as described immediately below (A.R.S. §§ 20-2108 and 20-2109). In particular, we emphasize that an agent or insurer must disclose whether it obtained information about the *credit history* of the applicant or insured.
- ❖ A.R.S. §§ 20-2108 and 20-2109 set forth the rights of applicants or insureds to access and correct personal information gathered in connection with an “insurance transaction” and the requirements imposed on insurers to act upon those rights. A.R.S. § 20-2102(13) defines “insurance transaction” as any personal, family or household insurance transaction which “entails the determination of an individual’s eligibility for an insurance coverage, benefit or payment or the servicing of an insurance application, policy, contract or certificate.”
- ❖ A.R.S. § 20-2106 mandates requirements for *Disclosure Authorization Forms* used by insurers and agents when gathering personal or privileged information in connection with insurance transactions that may be subsequently disclosed. The written forms shall disclose: the date, the persons authorized to disclose information, the nature of the information authorized to be disclosed, the recipients of the disclosed information, the purposes for which the information is being collected, the period of authorization and the right to receive a copy of the authorization.
- ❖ A.R.S. § 20-2110 prescribes the written notice an agent or insurer must give upon making an “adverse underwriting decision” as defined in A.R.S. § 20-2102(1) to include in part declinations, terminations, or placement in a substandard carrier. In particular, insurers are required to provide the specific reason for the adverse decision to the applicant and inform the applicant or policyholder of their rights under A.R.S. §§ 20-2108 and 20-2109.

Questions concerning the matters discussed in this Circular Letter may be addressed to Erin Klug, Chief Market Conduct Examiner (602) 912-8442, or Cathy O’Neil, Consumer Affairs Legal Officer (602) 912-8446.